

**ORDINANCE NO. 31, 2007 SERIES**

**AN ORDINANCE AMENDING FRANKFORT CODE OF ORDINANCES CHAPTER 110, GENERAL LICENSING PROVISIONS, SECTION 110.04, NET BUSINESS PROFITS**

BE IT ORDAINED BY THE CITY OF FRANKFORT, KENTUCKY,

That Frankfort Code of Ordinances, Section 110.04, Net Business Profits is hereby amended to add Section 110.04(C) and Section 110.04(D) to read as follows:

Section 110.04(C) - *Sufficient Nexus Test.*

- (1) A business, individual or entity engaged in a business, profession, trade or occupation shall be deemed to be subject to the net business profits fee if the business, individual or entity has a Nexus with the City of Frankfort sufficient to justify the imposition of the license fee in a manner consistent with the commerce clause and due process clause of the 14<sup>th</sup> Amendment to the Constitution of the United States and other applicable federal law. If the business, individual or entity has a sufficient Nexus with the City of Frankfort, but also has a sufficient Nexus with other governmental units, then the net profits derived from activities conducted within the City of Frankfort shall be determined by the apportionment formula set forth in Chapter 110 of the Frankfort Code of Ordinances.
  - (a) Establishing Nexus. Without excluding by implication other activities which may create a Nexus, one or more of the following connections between a person/business entity in the City of Frankfort shall normally establish a sufficient Nexus;
    - (i) Location of a place of business in the City of Frankfort;
    - (ii) Frequent and continuing entry into the City of Frankfort in the course of business by an officer or employee of the business. The occasional entry into the City of Frankfort by an officer or employee of a business for which said officer or employee is not required to pay occupational license fee to the City of Frankfort under Section 110.03(A)(5)(c) does not, by itself, constitute frequent and continuing entry into the City of Frankfort in the course of business by an officer or employee of the business for purposes of this section;
    - (iii) Delivery of goods to residents in the City of Frankfort other than through the mails or by common carrier;
    - (iv) Contracting to sell goods in the City of Frankfort; and,
    - (v) Conducting substantial business activity in the City of Frankfort leading to a contract to buy or sell goods;

- (b) Business locations within the City of Frankfort. The absence of a branch, office, store, warehouse or other permanent place of business within the City of Frankfort shall not exempt or render non-licensable the net profits of any trade, business, profession, enterprise, undertaking or other activity on which a license fee is imposed by the ordinance.

Section 110.04(D) - *Payment Election*.

Every person, fiduciary, corporation or association conducting business in the City of Frankfort that earns not more than \$4,000 per year in net profits on business conducted in Frankfort and that does not have an employee working more than a total of 5 eight-hour work days per year in the City for which the employee earns more than \$4,000, may elect to pay a flat business license fee to the City of Frankfort in the amount of \$100.00. In order to elect this payment option, the person, fiduciary, corporation or association conducting business in the City of Frankfort is required to file a completed Election to Pay Flat Net Business Profits Tax Return Form with the required \$100.00, and submit it with the Net Profits Tax Return Form on or before April 15 of the following year. The filing of the completed forms with the required payment on behalf of a person, fiduciary, corporation or association qualified to elect this payment option is deemed to satisfy the requirements of Sections 111.30, 110.04 and 110.07 of the City of Frankfort's Code of Ordinances. This section shall not apply to itinerant merchants within the meaning of Section 111.21 of the City of Frankfort's Code of Ordinances.

First reading on the 27<sup>th</sup> day of August, 2007.

Final adoption on the 24<sup>th</sup> day of September, 2007.

S/William I. May, Jr.  
T/Mayor

Attest:  
S/Ramona W. Newman  
T/City Clerk

SUMMARY: This ordinance establishes the Nexus test for the payment of the City of Frankfort net business profits fee and provides the option to elect to pay a flat business license fee in the amount of \$100.00 by a person, fiduciary, corporation or association conducting business in the City of Frankfort and that earns not more than \$4,000 per year in net profits and that does not have any employees working more than a total of 5 eight-hour work days per year in the City of Frankfort for which the employee earns more than \$4,000.

S/Robert C. Moore  
T/City Solicitor

Published in full September 30, 2007